

**United States Department of Labor
Employees' Compensation Appeals Board**

YVONNE ZARAGOZA-GARCIA, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Tampa, FL, Employer**

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**Docket No. 04-2079
Issued: January 14, 2005**

Appearances:

Capp P. Taylor, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On August 20, 2004 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated July 23, 2004, which denied her emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of employment.

FACTUAL HISTORY

This case has been before the Board previously. In a June 19, 2003 decision, the Board modified a February 26, 2002 Office decision and found that appellant established two compensable factors of employment based on harassing incidents that occurred in November 1998. The Board, however, found that the medical evidence failed to establish that her emotional condition was causally related to the two accepted factors of employment.¹ The

¹ Docket No. 02-1662 (issued June 19, 2003).

law and the facts as set forth in the previous Board decision and order is incorporated herein by reference.

On June 16, 2004 appellant requested reconsideration and submitted a June 16, 2004 report from Dr. Conrad Weller, a Board-certified psychiatrist, who advised that he had treated appellant and had reviewed the medical record and a statement written by appellant “regarding events that occurred on the job on February 17, 1999.” He diagnosed a post-traumatic stress disorder and major depressive disorder which were the “result of the referenced specific stressors at work.” The physician advised that appellant’s condition was permanent and concluded that appellant could never again work at the employing establishment, noting that she was gainfully employed elsewhere.

By decision dated July 23, 2004, the Office denied modification, finding that Dr. Weller’s June 16, 2004 report was insufficient to establish that appellant’s condition was causally related to the accepted employment factors.

LEGAL PRECEDENT

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.² When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.³

ANALYSIS

Appellant established two compensable factors of employment, harassing incidents that occurred in November 1998, as found in the Board’s June 19, 2003 decision. Appellant submitted a report dated June 16, 2004 in which Dr. Weller, her treating psychiatrist, advised that her permanent conditions of post-traumatic stress disorder and depressive disorder were caused by events that occurred at work on February 17, 1999. The Board finds that this report is insufficient to establish the claim as Dr. Weller did not mention the specific compensable factors of employment in his report but rather opined that her condition was caused by incident on February 17, 1999. He did not further describe the February 17, 1999 incidents, and no events on that date have been accepted as compensation factors of employment.⁴ The Board therefore

² *Leslie C. Moore*, 52 ECAB 132 (2000).

³ *See Dennis J. Balogh*, 52 ECAB 232 (2001).

⁴ The record before the Board contains no mention of a February 1999 incident but does allude to a “claim” for sexual harassment filed at that time. On her claim form and in a statement, appellant noted that she first became aware of her depression on February 17, 1999 and that it was aggravated by employment on February 18, 1999. Employing establishment managers’ statements advised that in the summer of 2001 appellant reported that she had been sexually harassed in February 1999.

finds that Dr. Weller's June 16, 2004 report is insufficient to relate the diagnosed conditions to the accepted factors found in this case.

Appellant has the burden of proof to establish that the emotional condition for which she claims compensation was caused or adversely affected by her federal employment.⁵ Part of this burden includes the necessity of presenting rationalized medical evidence, based on a complete factual and medical background, establishing a causal relationship. An award of compensation may not be based upon surmise, conjecture or upon appellant's belief that there is a relationship between her medical conditions and her employment. The Board finds that appellant has not submitted sufficient probative medical evidence to establish that her emotional condition was caused by the compensable factors of employment. She therefore failed to discharge her burden of proof.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an employment-related emotional condition causally related to the accepted employment factors.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 23, 2004 be affirmed.

Issued: January 14, 2005
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ See *Calvin E. King*, 51 ECAB 394 (2000).